THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 10531 of 2007

DATE: 07-08-2007

Between :

Vanukuru Seethamma and 2 others.

… Petitioners

And

Commissioner of Endowments,
A.P., Hyderabad and 2 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 10531 of 2007

ORDER:

This writ petition is filed seeking a declaration that the action of the respondents in issuing notices dated 27-04-2007 for eviction of the petitioners under the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') is arbitrary and illegal.

The petitioners herein claim to be in possession and enjoyment of land to an extent of Ac.25.08 cents situated in different survey numbers of Nallapadu village belonging to the second respondent-temple. It is stated that they were granted lease vide proceedings of the Commissioner of Endowments dated
28-09-1978 and since then they have been cultivating the lands by paying Maktha regularly. It is also stated that in terms of the circular dated 08-08-1980 issued by the Commissioner of Endowments under which the sitting tenants shall be given preference for purchase of the lands as per the provisions of the Andhra Pradesh Tenancy Act, the second respondent agreed to sell the land in question to the petitioners at the rate of Rs.24,000/- per acre. The Government of Andhra Pradesh vide G.O.Rt.No.338 dated 27-03-1982 granted necessary permission to the Executive Officer to execute the sale deeds in favour of the petitioners and keep the sale proceeds in fixed deposit. However, some persons who bore grudge against the petitioners filed O.S.No.381 of 1982 on the file of the District Munsif, Guntur seeking a declaration that the sale proposed to be conducted by private negotiations in favour of the petitioners was arbitrary and

illegal and for a consequential injunction restraining the State of Andhra Pradesh from proceeding further. Pending, the said suit, temporary injunction was granted in I.A.No.1691 of 1992. Against the said order of temporary injunction though the petitioners filed CMA.No.47 of 1984, the same was dismissed on 10-09-1994. The petitioners herein preferred CRP.No.3160 of 1984 which was allowed by this Court by order dated 11-12-1984 thereby setting aside the orders of the Courts below and directing that the sales may be effected in pursuance of the order of the Government subject to result of the suit. In spite of the said order, the sale deeds could not be executed during the pendency of the suit and ultimately, the suit was dismissed by judgment dated 10-03-1988 on the ground that the Civil Court has no jurisdiction. However, it was further held that the sale can be held only by way of public auction. Against the said judgment and decree, A.S.No.128 of 1988 was filed in the Court of the District Judge, Guntur whereas the plaintiffs therein preferred cross objections. By judgment, dated 16-09-1994, the said appeal was allowed with costs and the cross objections were dismissed. Thus the sale proposed in favour of the petitioners and other tenants was upheld by the Appellate Court. Admittedly, the said judgment has become final.

Pursuant thereto, the petitioners herein issued a notice dated 30-01-1995 calling upon the respondents to receive the balance of sale consideration and execute the sale deed. Since the respondents failed to do so, the petitioners filed O.S.No.12 of 1997, O.S.No.57 of 1997 and O.S.No.58 of 1997 seeking specific performance of contract and to direct the respondents to execute proper sale deeds as agreed earlier for sale of the lands in question at the rate of Rs.24,000/- per acre. However, the said suits were dismissed on 13-04-2007.

In the meanwhile, the second respondent-temple got issued notices dated 27-04-2007 through their counsel calling upon the petitioners to surrender the vacant possession together with damages for use and occupation at the rate of Rs.25,000/- per acre within a

week, failing which temple would be constrained to take appropriate action in a Court of law. The said action of the second respondent is under challenge in this writ petition.

I have heard the learned counsel for the petitioners.

A perusal of the material on record shows that the petitioners got issued a registered notice dated 18-04-2007 to the second respondent claiming that they acquired perpetual rights by virtue of the earlier orders passed by the Government from time to time and therefore, the provisions of the Act cannot be enforced against them.

In response to the said notice the impugned notices dated 27-04-2007 were issued disputing the perpetual rights claimed by the petitioners and calling upon them to surrender the vacant possession alleging that they are continuing in possession of the lands in question illegally without paying Maktha for use and occupation.

At the outset, it is to be noted that as on today, no sale deeds have been executed in favour of the petitioners and even according to them they are continuing in possession only as tenants. Even assuming that there was an agreement between the second respondent and the petitioners for sale of the land in their favour by private negotiations, the same was not acted upon and as on the date of the commencement of the Act the petitioners were holding the lands only as lease holders. It is also relevant to note that the civil suits filed by the petitioners for specific performance of the so called agreements of sale were dismissed. Admittedly, the petitioners are not land less poor persons and therefore not entitled for the benefit of Section 82(2) of the Act.

In the circumstances, it is always open to the second respondent to take appropriate steps for recovery of the vacant possession following due process of law and to grant fresh leasehold rights by conducting public auction.

For the aforesaid reasons, the action proposed under the impugned notices cannot be held to be arbitrary or illegal on any

ground whatsoever. Hence, the writ of Mandamus as prayed for cannot be granted.

Accordingly, the writ petition is disposed of leaving it open to the respondents to take appropriate steps following due process of law for recovery of the possession of the land in occupation of the petitioners. No costs.

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G. ROHINI, J

Date:07-08-2007
KLP